

Declarations	Applicable forms	Due dates
Change in Inspection Status Form (applies only if your plant site is currently subject to inspection, pursuant to § 715.1(d)(1) of the CWCR, and you anticipate that the production by synthesis of UDOCs at your plant site during the current calendar year will remain below the inspection threshold level specified therein).	Change in Inspection Status Form .....	December 15th of any calendar year in which the production by synthesis of UDOCs is anticipated to be below the inspection threshold level specified in § 715.1(d)(1) of the CWCR.*

\*You may submit the Annual Declaration on Past Activities (ADPA) described in § 715.1(b)(1), instead of the Change in Inspection Status Form, if you anticipate that UDOC production at your plant site during the current calendar year will be below the inspection threshold level specified in § 715.1(d)(1), but you expect your plant site to remain subject to the UDOC declaration requirements in § 715.1(a)(1). In this case, the due date for the Annual Declaration on Past Activities will be December 15th of the current calendar year, instead of February 28th of the *next* calendar year.

[72 FR 14408, Mar. 28, 2007]

## PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

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SUPPLEMENT NO. 1 TO PART 716—NOTIFICATION, DURATION, AND FREQUENCY OF INSPECTIONS

SUPPLEMENT NOS. 2–3 TO PART 716 [RESERVED]

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

### § 716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI(E), Part VII(B), Part VIII(B) and Part IX(B). See part 717 of the CWCR for provisions concerning challenge inspections.

(a) *Overview.* Each State Party to the CWC, including the United States, has agreed to allow certain inspections of

declared facilities by inspection teams employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the Convention. BIS is responsible for leading, hosting and escorting inspections of all facilities subject to the provisions of the CWCR (see § 710.2 of the CWCR).

(b) *Declared facilities subject to initial and routine inspections—(1) Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

(ii) If you are a new Schedule 1 production facility pursuant to § 712.4 of the CWCR, your facility is subject to an initial inspection within 200 days of submitting an initial declaration.

NOTE TO § 716.1(b)(1): All Schedule 1 facilities submitting a declaration are subject to inspection.

(2) *Schedule 2 plant sites—(i) Inspection thresholds for Schedule 2 plant sites.* Your declared plant site is subject to inspection if at least one plant on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(A) 10 kg of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule

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2, Part A, paragraph 3 in Supplement No. 1 to part 713 of the CWCR);

(B) 1 metric ton of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (see Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of the CWCR); or

(C) 10 metric tons of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to part 713 of the CWCR).

(ii) *Initial inspection for new Schedule 2 plant sites.* Your declared plant site is subject to an initial inspection within the first year after submitting a declaration, if at least one plant on your plant site produced, processed or consumed in any of the three previous years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the threshold quantities set forth in paragraphs (b)(2)(i)(A) through (C) of this section.

NOTE TO §716.1(b)(2): The applicable inspection threshold for Schedule 2 plant sites is ten times higher than the applicable declaration threshold. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold, are subject to inspection.

(3) *Schedule 3 plant sites.* Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate they will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical.

NOTE TO §716.1(b)(3): The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals (UDOC) during the previous calendar year.

NOTE 1 TO §716.1(b)(4): You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or

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fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

NOTE 2 TO §716.1(b)(4): All UDOC plant sites that submit a declaration based on §715.1(a)(1)(i) of the CWCR are subject to a routine inspection.

NOTE 3 TO PARAGRAPH (b)(4): Any UDOC plant site that is eligible, in accordance with §715.1(d)(2) of the CWCR, to submit a Change in Inspection Status Form or an Annual Declaration on Past Activities by December 15th of the current calendar year (*i.e.*, a plant site that will be below the inspection threshold level indicated in paragraph (b)(4) of this section during the current calendar year), but that fails to do so, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of the CWCR under this part, BIS will:

- (1) Lead on-site inspections;
- (2) Provide Host Team notification to the facility of an impending inspection;
- (3) Take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection;
- (4) Dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation;
- (5) Escort the Inspection Team on-site throughout the inspection process;
- (6) Assist the Inspection Team with verification activities;
- (7) Negotiate the development of a site-specific facility agreement, if appropriate (see §716.6); and
- (8) Ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

[71 FR 24929, Apr. 27, 2006, as amended at 72 FR 14409, Mar. 28, 2007]

### §716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities—(1) Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections*—(i) *Initial inspections*. (A) During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see § 716.6 of the CWC) for the conduct of routine inspections.

(B) For new Schedule 1 production facilities declared pursuant to § 712.4 of the CWC, the U.S. National Authority, in coordination with BIS, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(ii) *Routine inspections*. During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (see § 716.6 of the CWC) developed during the initial inspections and concluded between the U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites*—(1) *Purposes of inspections*. (i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 plant sites are to verify:

(A) The absence of any Schedule 1 chemical, especially its production, except in accordance with the provisions of the Convention;

(B) Consistency with declarations of production, processing or consumption of Schedule 2 chemicals; and

(C) Non-diversion of Schedule 2 chemicals for activities prohibited under the Convention.

(ii) During initial inspections, Inspection Teams shall collect information to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. The Inspection Team will take the following criteria into account, *inter alia*:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections*—(i) *Initial inspections*. During initial inspections of declared Schedule 2 plant sites, in addition to the verification activities listed in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see § 716.6 of the CWC).

(ii) *Routine inspections*. During routine inspections of declared Schedule 2 plant sites, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to any appropriate site-specific facility agreements developed during the initial inspections (see § 716.6 of the CWC), and concluded between the U.S. Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 plant sites*—(1) *Purposes of inspections*. The general aim of inspections of declared Schedule 3 plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections*. During routine inspections of declared Schedule 3

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plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and the Inspection Team may draft site-specific facility agreements for the conduct of subsequent routine inspections (see §716.6 of the CWCR). Although the Convention does not require facility agreements for declared Schedule 3 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled discrete organic chemical plant sites*—(1) *Purposes of inspections.* The general aim of inspections of declared UDOC plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared UDOC plant sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the Inspection Team may develop draft site-specific facility agreements for the conduct of subsequent routine inspections (see §716.6 of the CWCR). Although the Convention does not require facility agreements for declared UDOC plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

### §716.3 Consent to inspections; warrants for inspections.

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she

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has the authority to make this decision for the facility.

(b) In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, BIS will seek administrative warrants as provided by the Act.

### §716.4 Scope and conduct of inspections.

(a) *General.* Each inspection shall be limited to the purposes described in §716.2 of the CWCR and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(b) *Scope*—(1) *Description of inspections.* During inspections, the Inspection Team:

(i) Will receive a pre-inspection briefing from facility representatives;

(ii) Will visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection;

(iii) May visually inspect other parts or areas of the plant site to clarify an ambiguity that has arisen during the inspection;

(iv) May take photographs or conduct formal interviews of facility personnel;

(v) May examine relevant records; and

(vi) May take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States National Authority, at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission pursuant to paragraph (a) of this section, except for information subject to export control under ITAR

(22 CFR parts 120 through 130) (see paragraph (b)(3) of this section). When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

(3) *ITAR-controlled technology*. ITAR-controlled technology shall not be divulged to the Inspection Team without U.S. Government authorization (such technology includes, but is not limited to technical data related to Schedule 1 chemicals or Schedule 2 chemicals identified in Note 2 to Supplement No. 1 to Part 712 or Note 1 to Supplement No. 1 to Part 713, respectively, of the CWCRC; also see 22 CFR Section 121.1, i.e., the United States Munitions List). Facilities being inspected are responsible for the identification of ITAR-controlled technology to the BIS Host Team, if known.

(c) *Pre-inspection briefing*. Upon arrival of the Inspection Team and Host Team at the inspection site and before commencement of the inspection, facility representatives will provide the Inspection Team and Host Team with a pre-inspection briefing on the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

(1) The pre-inspection briefing will address:

- (i) Facility health and safety issues and requirements, and associated alarm systems;
- (ii) Declared facility activities, business and manufacturing operations;
- (iii) Physical layout;
- (iv) Delimitation of declared facility;
- (v) Scheduled chemicals on the facility (declared and undeclared);
- (vi) Block flow diagram or simplified process flow diagram;
- (vii) Plants and units specific to declared operations;

(viii) Administrative and logistic information; and

(ix) Data declaration updates/revisions.

(2) The pre-inspection briefing may also address, *inter alia*:

- (i) Introduction of key facility personnel;
- (ii) Management, organization and history;
- (iii) Confidential business information concerns;
- (iv) Types and location of records/documents;
- (v) Draft facility agreement, if applicable; and
- (vi) Proposed inspection plan.

(d) *Visual plant inspection*. The Inspection Team may visually inspect the declared plant or facility and other areas or parts of the plant site as agreed by the Host Team Leader after consulting with the facility representative.

(e) *Records review*. (1) The facility must provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the requirements of the CWCRC. These supporting materials and documentation shall include records related to activities that have taken place at the facility since the beginning of the previous calendar year, regardless of whether or not the facility has submitted its current year Annual Declaration on Past Activities to BIS at the time of the inspection. The facility shall also make available for inspection all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. All supporting materials and documentation subject to the requirements of this paragraph (e) must be retained by the facility in accordance with the requirements of § 721.2 of the CWCRC. The facility also must permit access to and copying of these records, upon request by BIS or any other agency of competent jurisdiction, in accordance with the requirements of § 721.1 of the CWCRC.

(2) The facility must provide access to these supporting materials and documentation in appropriate formats (e.g., paper copies, electronic remote

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access by computer, microfilm, or microfiche), through the U.S. Government Host Team to Inspection Teams, during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader.

(3) The facility must provide the Inspection Team with appropriate accommodations in which to review these supporting materials and documentation.

(4) If a facility does not have access to supporting materials and documentation for activities that took place under previous ownership, because such records were not transferred to the current owner of the facility by the previous owner (e.g., as part of the contract involving the sale of the facility), the previous owner must make such records available to the Host Team for provision to the Inspection Team in accordance with section 305 of the Act. However, the current owner of a facility, upon receiving notification of an inspection (see §716.5 of the CWC), is responsible for informing BIS if the previous owner did not transfer records for activities that took place under the previous ownership—this will allow BIS to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to the inspection activities.

(f) *Effect of facility agreements.* Routine inspections at facilities for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

(g) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host

Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the Inspection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the facility, and the Host Team Leader will take into consideration the facility's input when providing official comments on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

[71 FR 24929, Apr. 27, 2006, as amended at 72 FR 14409, Mar. 28, 2007]

### §716.5 Notification, duration and frequency of inspections.

(a) *Inspection notification*—(1)(i) *Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. BIS will also provide a separate inspection notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner and to the operator, occupant or agent in charge, BIS (or the Federal Bureau of Investigation, if BIS is unable) may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or location for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection; and

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(D) The names and titles of the Inspection Team members.

(ii) *Consent to inspection.* In addition to appropriate information provided by the OPCW in its notification to the USNA, BIS's inspection notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the

inspection notification, BIS will seek an administrative warrant. The current owner of a facility, upon receiving notification of an inspection, is also responsible for informing BIS if the previous owner did not transfer (to the current owner) records for activities that took place under the previous ownership (see § 716.4(e) of the CWCR)—this will allow BIS to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to the inspection activities.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

Activity	Agency action	Facility action
(A) OPCW notification inspection .....	<p>(1) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours.</p> <p>(2) Upon notification from the U.S. National Authority, BIS immediately transmits inspection notification via facsimile to the inspection point of contact to ascertain whether the facility (i) grants consent and (ii) requests assistance in preparing for the inspection. In absence of consent within four hours of facility receipt, BIS intends to seek an administrative warrant.</p>	<p>Acknowledges receipt of facsimile.</p> <p>(A) Indicated whether it grants consent. (B) May request advance team support. No requirement for reimbursement of U.S. Government's services.</p>
(B) Preparation for inspection .....	<p>(1) BIS advance team generally arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.</p> <p>(2) If records for activities that took place under the previous ownership of the facility are deemed relevant to the inspection, BIS will contact the previous owner of the facility to arrange for access to any such records required under the CWCR that have not been transferred to the current owner.</p>	<p>If advance team support is provided, facility works with the advance team on inspection-related issues.</p> <p>The current owner of the facility must inform BIS if the previous owner of the facility did not transfer (to the current owner) records for activities that took place under the previous ownership.</p>

(2) *Timing of notice*—(i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the Inspection Team in the United States, and will notify the USNA of a routine inspection not less than 24 hours prior to arrival of the Inspection Team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within

six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the Inspection Team at the plant site to be

inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and UDOC plant sites.* For declared Schedule 3 and UDOC plant sites, the Technical Secretariat will notify the USNA of a routine inspection not less than 120 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections—(1) Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader, and will be based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out there. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(2) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The

Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(3) *Schedule 3 and UDOC plant sites.* For declared Schedule 3 or UDOC plant sites, the maximum duration of routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(c) *Frequency of inspections.* The frequency of inspections is as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites.* As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is two per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the Inspection Team's assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites.* As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and



the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

(4) *UDOC plant sites.* As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

#### § 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific agreement between the U.S. Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities. For new Schedule 1 production facilities declared pursuant to § 712.4 of the CWC, the USNA, in coordination with the Department of Commerce, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and UDOC plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or UDOC plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, BIS shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the

notified person may participate in preparations with BIS representatives for the negotiation of such an agreement. During the initial or routine inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement or amendment to a facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BIS will consult with the affected facility on the contents of the agreements and take the facility's views into consideration during negotiations. BIS will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and the OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BIS will give consideration to such comments prior to approving final facility agreements with the OPCW. The USNA shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and UDOC facilities are concluded, as appropriate, with the OPCW in coordination with BIS.

(c) [Reserved]

(d) *Further information.* For further information about facility agreements, please write or call: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Telephone: (202) 482-1001.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

#### § 716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and the Act and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. Analysis

## § 716.8

will be restricted to verifying the absence of undeclared scheduled chemicals, unless otherwise agreed after consultation with the facility representative.

### § 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWCR, however, such monitoring is not anticipated. The U.S. Government will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

### § 716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to the CWCR during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing

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records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of the CWCR, with the following notation: “Attn: Report of inspection-related costs.”

### § 716.10 Post-inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit comments on the final inspection report to BIS, within the time-frame specified by BIS (*i.e.*, at least 7 working days from receipt of the report), and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action, *e.g.*, amended declaration requirement (see §§ 712.7(d), 713.5(d), 714.4(d), and 715.2(c) of the CWCR), information on the status of the draft facility agreement, if applicable, and the date on which the report on inspection-related costs (see § 716.9 of the CWCR) is due to BIS.

### SUPPLEMENT NO. 1 TO PART 716—NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	72 hours prior to arrival of Inspection Team at the point of entry (initial); 24 hours prior to arrival of Inspection Team at the point of entry (routine).	48 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.
Duration of inspection ..	As specified in facility agreement.	96 hours .....	24 hours .....	24 hours.
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry.			
Duration of Challenge inspection*.	84 hours.			

\* See part 717 of the CWCR.

SUPPLEMENT NOS. 2-3 TO PART 716  
[RESERVED]

**PART 717—CWC CLARIFICATION  
PROCEDURES (CONSULTATIONS  
AND CHALLENGE INSPECTIONS)**

Sec.

717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

717.2 Challenge inspections.

717.3 Samples.

717.4 Report of inspection-related costs.

717.5 Post-inspection activities.

AUTHORITY: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

**§ 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.**

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. States Parties may attempt to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW). A State Party may also request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) In the event that BIS receives a request for clarification, pursuant to Article IX of the Convention, concerning possible non-compliance with the CWC, any person or facility subject to the CWCR (parts 710 through 729 of this subchapter) that receives an official written request from BIS for clarification must, within five working days from receipt of such request, provide BIS with any relevant information required to respond to the OPCW or the State Party(ies) who requested clarification under Article IX. BIS will contact the person or facility subject to the Article IX clarification, as early as practicable, prior to issuing an official

written request for clarification to the person or facility.

**§ 717.2 Challenge inspections.**

Persons or facilities, other than U.S. Government facilities as defined in § 710.2(a) of the CWCR, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention, irrespective of whether or not they are required to submit declarations or reports under the CWCR. BIS will host and escort the international Inspection Team for challenge inspections in the United States of such persons or facilities.

(a) *Consent to challenge inspections; warrants for challenge inspections.* (1) The owner, operator, occupant or agent in charge of a facility may consent to a challenge inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility. The facility must respond to the notice of inspection, which includes within it a request for consent to the inspection, within four hours of the facility's receipt of the notice of inspection from BIS.

(2) In instances where the owner, operator, occupant or agent in charge of a facility does not consent to a challenge inspection, BIS will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notice of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. BIS will provide notice of inspection to the inspection point of contact at such time that a person or facility has been clearly established, if possible, and when notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner and to the operator, occupant or agent in charge, BIS (or another appropriate agency, if